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C O N F I D E N T I A L SECTION 01 OF 02 ANKARA 001310

SIPDIS

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TAGS: [PGOV](#) [PREL](#) [TU](#)

SUBJECT: TURKEY'S CONSTITUTIONAL COURT SETS DATE FOR AKP
CLOSURE CASE DELIBERATIONS

REF: A. ANKARA 1289

[B](#). ANKARA 1260

[C](#). ANKARA 1247

Classified By: Ambassador Ross Wilson for reasons 1.4(b),(d)

[1](#). (C) Summary. Turkey's Constitutional Court will begin deliberations July 28 on the closure case pending since March against the ruling Justice and Development Party (AKP). It is expected to take several days to produce a verdict, although the Court is not required to rule by any date certain. Opinions vary over whether the Court will announce its ruling before or after the August 1-4 Supreme Military Council (YAS) meeting at which promotions and command decisions will be confirmed. An unprecedented decision to close the ruling party and ban the prime minister -- still seen by many as the most likely outcome -- could interfere with the YAS proceeding, normally chaired by the prime minister and attended by the defense minister and the senior most generals and admirals in the Turkish Armed Forces. Whether the decision is to ban AKP and some members or something short of closure, it will be essential to issue a clear, timely US response, ideally coordinated with the European Union. End summary.

[2](#). (U) Chief Justice Kilic will convene the Constitutional Court July 28 to begin deliberating the AKP closure case. The eleven judges will discuss in a closed session the Court rapporteur's July 16 legal assessment recommending against closure (ref A), along with the parties' pleadings and oral presentations submitted since the indictment was filed on March 14. Most predict the Court will close AKP and ban some party members, including PM Erdogan, although murmurs of a decision short of closure continue (ref B). At least seven judges must vote for the party to be closed, and both law and precedent appear to require a closure decision to justify any personal bans.

[3](#). (C) The Court is not required to issue a decision by a certain deadline. However, contacts flag several indicators that a ruling may come by early August. Key among them is the four-day military promotion process, chaired by the prime minister, whose start date was recently moved up to August 1 from August 4. A Court ruling to close AKP and ban Erdogan and others issued before the YAS concludes could cloud the promotion procedure, including who would chair the session, according to Hurriyet's Sukru Kucuksahin. Others argue it would remove Erdogan from the YAS approval process, a development AKP opponents might favor. Ankara University's Hasan Koni does not expect the closure case to impact the YAS meeting; he predicts a Court decision just before or after some judges travel to Russia in mid-August. An unlikely

refusal or delay by President Gul in approving the promotion of certain general officers, perhaps in retaliation for a ruling against AKP, would put the military in limbo. The heated response from the military -- as well as many Turks -- to such a stand-off would also increase tensions and dilute AKP's ability to play the victim vote.

¶4. (C) Kucuksahin and others expect the Court to issue the AKP decision in less time than the 10 days of deliberations required in the Virtue Party (Fazilet Party) closure case because the current case involves the ruling party. The Court's June 2001 decision to close the Virtue Party came over two years after the case was filed in May 1999. The Court's decision takes effect once the legal reasoning is published in the Official Gazette; in less high-profile cases, the Court commonly releases its reasoning days or even weeks after it announces a verdict. Kucuksahin predicts the Court may not close AKP but use its reasoning to warn the party to protect secularism and expel members with allegedly more anti-secular attitudes.

¶5. (SBU) Although Turkey's Constitution does not specifically address succession details in the event the prime minister is banned, a power vacuum is unlikely should Erdogan be forced to step down (ref C). The prime minister's deputy would continue to head the government, according to constitutional law professor Mustafa Kamalak, until a new prime minister, appointed by the president, can establish a government. Only five ministers are at risk of being banned along with Erdogan: Education Minister Cilek, Transportation Minister Yildirim, State Minister Aydin, State Minister and DPM Yazici

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and Health Minister Akdag. AKP MPs who are not banned would retain their seats as independents.

¶6. (C) Comment. In our judgment, a ruling in this case could well be issued next week or the week of August 4. Probably regardless of the outcome, the USG will have to comment, and our response should ideally be coordinated with the European Union. Key elements of a response (obviously depending on the ruling) should include:

-- A call on Turks to ensure this development is not a setback for democracy by proceeding calmly and on a pragmatic basis, consistent with the laws and constitution.

-- Our hope that a new government will be formed quickly that reflects the will of the voters at the most recent election.

-- A reiteration of a common commitment to democratic values and defense of common interests that underpin our relations. We hope and expect that Turkey's leaders and citizens will pursue and continue democratic political reforms and market economic gains that will promote the goal of EU accession, which we support.

End comment.

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